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U.S. Express Mail Label No. EV 177 189 827 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Guenther	
Serial No.:	09/439,416	
Filed:	November 13, 1999	Examiner: D.Harvey
Title:	LOW COST MOTOR DESIGN FOR RARE-EARTH-MAGNET LOUDSPEAKERS	Art Unit: 2743
Case No.:	102316-3 ( <i>formally 0322282-0003</i> )	

Assistant Commissioner of Patents  
Washington, DC 20231

Dear Sir:

**PETITION TO REVIVE UNINTENTIONALLY  
ABANDONED APPLICATION UNDER 37 C.F.R. § 1.137(b)**

Applicant requests revival of the above referenced application pursuant to the provisions of 37 CFR 1.137(b). Grounds for this request are detailed below and supported in the accompanying declaration of the inventor, Godehard A. Guenther.

The above-cited application was unintentionally abandoned for failure submit an Appeal Brief subsequent to mailing of a Notice of Appeal (that Notice was received by the United States Patent and Trademark Office on August 3, 2001). In lieu of that Brief, the Applicant encloses a Continuing Application per 37 C.F.R. 1.53(b) to be treated as a complete reply per 37 C.F.R. 1.137(c). The entire delay in filing that reply/Continuing Application from the due date of the Brief to today was unintentional.

In addition to the reply/Continuing Application, please find enclosed fees per 37 C.F.R. 1.137(b)(2) as well as fees for the reply/Continuing Application. Please charge any additional

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this Petition or that Continuing Application that may be required, or credit any overpayments, to Deposit Account No. 141449.

Referring to the accompanying affidavit, the unintentionally abandoned application (the "Application") was filed in November 1999. Applicant paid the attorney fees and the United States Patent and Trademark Office charges with funds from his small audio speaker design business. See Affidavit of Godehard A. Guenther at ¶ 3.

During the course of prosecution of the Application, a consumer products manufacturer agreed to take over the funding of it and the four other applications in Applicant's patent portfolio. This was in exchange for some rights and was necessary in order for Applicant to continue to invent and to protect his inventions. Indeed, with that funding, Applicant was able to grow his portfolio from five to nine patent applications. Id. at ¶ 4.

In May 2001, the consumer products manufacturer unexpectedly cancelled Applicant's agreement and stopped funding prosecution of the Application (as well as that of the others in his portfolio). It also stopped paying the royalties that he had been using to run his business. Id. at ¶ 5.

Applicant immediately began seeking another manufacturer, specifically another consumer products manufacturer, that would resume funding the Application (as well as his others) and his business. Since the manufacture of most goods of the type that use Applicant's inventions takes place in the Far East, this necessitated frequent travel to that part of the world. Id. at ¶ 6.

Applicant was successful and, by September 2001, had a letter of intent from a second consumer products manufacturer. They were negotiating toward a final agreement, when the September 11<sup>th</sup> Tragedy occurred. In the economic downturn that followed, that manufacturer ceased negotiations. Id. at ¶ 7.

Applicant began, again, seeking a manufacturer to fund this and his other applications and his business operation. As before, he focused on manufacturers in the Far East. Id. at ¶ 8.

The lack of funding and the expense of travel to the Far East to find financial backing rapidly diminished Applicant's reserves. This forced him to lay off the entire staff of his business, including the secretary and office administrator. Id. at ¶ 9.

Though Applicant's account had fallen in arrears, his patent attorneys continued prosecuting the Application (and the others in his portfolio). However, when the amounts past due exceeded permissible limits, they sought reimbursement and instructions from Applicant on a case-by-case basis. That began in November/December 2001, shortly after the time when the five-month extension period for filing an appeal brief (or continuation) began. Id. at ¶ 10.

Contacting Applicant, however, proved nearly impossible, since his office staff had been laid off and since he was spending most of my time and energies traveling abroad seeking funding. Id. at ¶ 11.

He was able to speak with his patent attorneys only a few times in the eight months between November 2001 and June 2002. Applicant understood they were keeping all eleven applications in his portfolio pending, as he had instructed them, by filing the necessary responses, extensions and fees. Indeed, they had him sign payment forms, so that the United States Patent and Trademark Office could charge his personal Discover™ credit card directly. Applicant assumed that they were keeping this Application alive, as well. Id. at ¶ 12.

In late June/early July 2002, Applicant reached a tentative agreement with a third consumer products manufacturer in the Far East to fund his patent portfolio and his business. Id. at ¶ 13.

Thereafter, in early-to-mid July 2002, Applicant contacted his patent attorneys to discuss his patent applications. It was only then that he came to appreciate that this Application was no longer pending: months earlier, while traveling in the Far East, he had missed and been late in responding to correspondence from them regarding it. Id. at ¶ 14.

The result was that, though almost all of the eleven applications in Applicant's portfolio remained pending, this Application had gone abandoned against his intentions, with no appeal

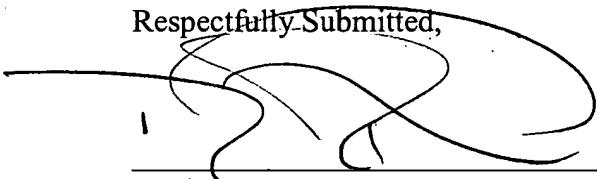
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brief (or continuation application) filed. Applicant has instructed his attorneys to prepare the required Appeal Brief (or continuation application) and petition to revive the Application, both of which accompany this Declaration. Id. at ¶ 15.

In his affidavit, Applicant states that his failure to file an Appeal Brief was unintentional, as was the entire delay in filing that Declaration and this accompanying petition and required reply. Accordingly, Applicant formally requests that the United States Patent and Trademark Office revise this application. Id. at ¶ 16.

In view of the foregoing, the Applicant requests that this Petition be granted and that the aforementioned Continuing Application be accepted and considered.

Respectfully Submitted,

  
David J. Powsner, Reg. No. 31,868

Dated: 8/28/02

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